IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 19.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.1556 of 2001

Thomas P.Kurien .. Appellant/Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Special officer,
Kinnakorai Industrial
Co-operative Tea Factory Ltd.,
Nilgiris. .. Respondents/Respondents

Writ appeal filed under Clause 15 of the Letters patent against the order dated 09.08.2000 made in W.P.No.15485/93 presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, after calling for the records from the file of the first respondent relating to ID.No.293 of 1990, quash the Award dated 28.1.1993 in so far as it declines the relief of reinstatement with full wages and consequently direct the second respondent to reinstate the petitioner with effect from 10.3.1990 with back wages, continuity of service and all other attendent benefits, Award costs.

For Appellant : Mr.D.Hariparanthaman

For 2nd respondent : Mr.Liagat Ali

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 09.08.2000 made in W.P.No.15485 of 1993, the writ petitioner by name Thomas P. Kurien has filed the above appeal.

2. Heard the learned counsel appearing for the appellant as well as the second respondent.

3. According to the appellant, he was appointed by the second respondent as Tea Maker by an order dated 1.4.1989. The said order shows that he was appointed as Tea Maker on a temporary basis for a period of six months on a basic pay of Rs.675/-. After expiry of the said period of six months, the second respondent has passed an order on 7.11.1989 stating that the appellant's period of probation was extended for six more months with effect from 01.10.1989. After the said extension, the second respondent has issued a memo dated 28.11.1989, for which the appellant has sent a reply on 30.11.1989. Thereafter, before expiry of the extended period of probation, the second respondent has issued another memo dated 17.2.1990 asking the appellant to show cause as to why disciplinary action should not be taken against him. The appellant sent a detailed reply dated 23.02.1990, refuting the charges levelled against him. By order dated 7.03.1990, the second respondent has terminated the appellant's service with effect from 10.03.1990 on the ground that his service was not a satisfactory one. Thereafter, the appellant raised a dispute before the Labour Officer, Udhagamandalam by letter dated 09.04.1990. Since the conciliation was not successful, the appellant filed a claim statement before the Labour Court, the first respondent herein, as provided under Section 2(A)(2) of the Industrial Disputes Act, 1947, which resulted in I.D. No.293 of 1990.

4. The dispute was contested by the management by filing counter statement. The Labour Court, on appreciation of materials placed before it, dismissed I.D. No.293 of 1990, however directed the second respondent to pay an ex-gratia amount of Rs.2000/- to the appellant. The said order of the Labour Court was challenged in W.P.No.15485 of 1993. By an order dated 09.08.2000, the learned single Judge, proceeding on the premise that the workman was appointed for a period of one year on probation and since his performance was not satisfactory, his service was terminated and after finding that the workman has no legal right to challenge the said order, dismissed the writ petition. However the learned single judge has made an observation to the effect that if the workman makes a representation, it is for the second respondent Co-operative Tea Factory Ltd. to consider the same and pass orders on merits. Aggrieved by the said order of the

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learned single Judge, the writ petitioner has filed the above writ appeal.

5. Mr. D. Hariparanthaman, learned counsel appearing for the appellant, at the foremost, submitted that the appellant was appointed as 'Tea Maker' on 01.04.1989. He pointed out that though in the appointment order, which is available at page 1 of the typed set of papers, the appointment was stated to be "temporary", in the subsequent proceedings, the second respondent-employer treated him as a probationer. If it is so, as per the Model Standing Orders Applicable to Workmen of the second respondent/Factory, in the absence of an order in writing one week before the normal date of completion of probation viz., six months, the workman shall be deemed to have satisfactorily completed his probation on the normal date of completion of his probation. According to him, this relevant aspect was not considered by the Labour Court as well as the learned single Judge. As an alternative argument, learned counsel submitted that since certain allegations have been raised against the workman, he cannot be terminated without conducting an enquiry.

6. On the other hand, the learned counsel appearing for the second respondent submitted that the workman's appointment was only for a period of six months, that too, on a temporary basis. In such circumstances, in view of the fact that his performance was not satisfactory, the second respondent is fully justified in terminating the service of the workman without assigning any reason. According to him, this aspect was considered by the Labour Court as well as the learned single Judge and there is no ground for interference. Accordingly, he prayed for dismissal of the writ appeal.

7. We have verified the relevant materials, the provisions applicable to the case and considered the rival contentions.

8. At the foremost, let us consider the first contention raised by the learned counsel for the appellant. By proceedings dated 01.04.1989, the second respondent appointed the writ petitioner as Tea Maker on temporary basis for a period of six months. However, by the subsequent proceedings, starting from 07.11.1989, the second respondent-employer proceeded with the workman as a probationer and his probation has been extended for a further period of six months from 01.10.1989. This is evident from the proceedings dated 07.11.1989, which is available at page 2 of the typed set of papers. It is also relevant to refer to the memo dated 17.02.1990, which is available at page 4 of the typed set of papers. In the said memo, the employer has specifically stated that the workman was appointed as "Tea Maker on probation for a period of six months...". It is relevant to refer the subsequent proceedings dated 07.03.1990 of the second respondent which reads as under :

> "As the performance of Thomas P. Kurien , the Tea Maker, is not satisfactory during the probation, he is terminated from service from 10.03.1990.....".

This order was challenged before the Labour Court.

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9. The learned counsel appearing for the appellant has brought to our notice that the Labour Court proceeded on the premise that the workman was appointed on 01.4.1999 on a temporary basis for a period of six months. If we consider the order dated 01.04.1989 alone, his appointment is to be treated as a temporary one, for a period of six months. However, as we have already seen, the subsequent proceedings amply show that the probation of the workman was extended for a further period of six months. In fact, in the order of termination dated 07.03.1990, the second respondent has specifically stated, "... Thomas P.Kurien, the Tea Maker is not satisfactory during the probation ....".

10. In the light of the details available from the various proceedings/orders issued by the second respondent, let us now consider the Model Standing Orders Applicable to the Workmen of the second respondent/Factory. Clause 1 in Schedule I of the Model Standing Orders speaks about classification of workmen. Clause 2(b) in Schedule I speaks about a probationer. Since the learned counsel appearing for the appellant heavily relied on the above Clause, we reproduce the same.

> "(b) A 'probationer' is one who is provisionally employed to fill a permanent vacancy in a post and has not completed the period of probation which shall be three months in the case of unskilled workmen and six months in respect of those other than unskilled:
>
> Provided, in any particular case, the management may extend the period of probation of any workman upto a further period equivalent to the period of probation prescribed, if they are not satisfied with the work and/or conduct of any workman during the period of probation. In any case where the period of probation is extended, the concerned workman shall be informed in writing at least one week before the normal date of the completion of probation and in the absence of any such intimation the workman shall be deemed to have satisfactorily completed his probation on the normal date. If a permanent workman is employed in a different post, he may, at any time during the probationary period, be reverted to his old permanent post."

11. The above provision, particularly the proviso to Sub-clause (b) to Clause 2 makes it clear that if the employer is not satisfied with the work or conduct of the workman during the period of probation and in any case where the period of probation is extended, the workman concerned shall be informed in writing at least one week before the normal date of completion of probation and in the absence of any such intimation, the workman shall be deemed to have satisfactorily completed his probation on the normal date. In the present case, the workman was appointed on 01.04.1989. The six months' period of probation expired on 30.09.1989. On the other hand, only on 07.11.1989, an order was passed extending the probation for a further period of six months. We have already extracted

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the relevant standing order. In view of the proviso referred to above and of the fact that the proceedings were issued only on 07.11.1989, i.e., after expiry of the probationary period of six months, as rightly contended, the workman-appellant herein, shall be deemed to have satisfactorily completed his probation on the normal date, i.e., on 30.09.1989. We are constrained to arrive such a conclusion, as stated earlier, in view of the conduct of the second respondent in treating the workman as probationer. We have sufficiently referred to the orders/proceedings treating the workman as a probationer. The said relevant aspect was not considered by the Labour Court. Likewise, the learned single Judge committed an error in holding that the workman was appointed for a period of one year on probation. We are satisfied that the conclusion arrived at by the Labour Court as well as the learned Judge cannot be sustained, particularly in the light of the stand taken by the management and in view of the proviso to Clause 2 (b) of Schedule I of the Model Standing Orders Applicable to the Workman.

12. In the light of what is stated above, we set aside the order of the learned single Judge dated 09.08.2000 passed in W.P.No.15485/2000 as well as the order of the Labour Court passed in I.D.No.293 of 1990 dated 28.01.1993. Consequently, the appellant is entitled to an order of reinstatement into service. However, we are not inclined to grant backwages for the period during which the workman was not in service. On the other hand, he is entitled to an order of reinstatement without backwages. The writ appeal is allowed to this extent. No costs.

13. The second respondent is directed to implement the above order within a period of four weeks from today(19.04.2006). Though we have declined to grant backwages, it is made clear that the said period shall be taken into consideration for all other purposes.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Special officer,
Kinnakorai Industrial
Co-operative Tea Factory Ltd.,
Nilgiris.
+ 1 CC To Mr.M. Liagat Ali, Advocate SR NO. 19593Advocate
+ 1 CC To Mr. D.Hariparanthaman, Advocate SR NO.19992

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